

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Paul Phillip Van Saarloos
Serial No. : 09/831,971
Filed : May 16, 2001
For : "Limited coherence stereo ophthalmoscope"

STATEMENT OF FACTS IN SUPPORT OF FILING
ON BEHALF OF NONSIGNING INVENTOR (37 C.F.R. §1.47(b))

I, Nerida Aitken, residing at 229 Coode Street, Bedford, Western Australia, Australia, state:

1. I am a legal practitioner in Australia, and am employed by Clayton Utz, of 108 St. George's Terrace, Perth, Western Australia 6000, Australia.
2. My firm has been representing The Lions Eye Institute of Western Australia Incorporated, (hereinafter "the Institute") in inter-related disputes with a former employee, Dr Paul Van Saarloos (hereinafter "Dr Van Saarloos").
3. From my review of our files relating to the inter-related dispute between the Institute and Dr Van Saarloos, I note that on 5 June 2001, Christopher Edwards, a legal practitioner formerly in the employ of Clayton Utz, despatched a letter to Dr Van Saarloos' lawyers, Corrs Chambers Westgarth. A copy of that letter and its enclosures, made from the copy retained in our files, is exhibited hereto as Exhibit NA-1. I note that the documents specified in line 2 of the text of the letter were enclosed with the letter. The documents included an attached specification, claims and drawings, and the power of attorney was in fact a Combined Declaration and Power of Attorney. I believe, from subsequent correspondence between Clayton Utz and Dr Van Saarloos' lawyers, that Dr Van Saarloos and/or his lawyers received the Assignment and Combined Declaration and Power of Attorney.

4. On 22 June 2001 Clayton Utz received a facsimile from Dr Van Saarloos' lawyers, in response to our letter dated 5 June 2001. That facsimile related to a variety of matters but specifically referred to the papers forwarded with our letter of 5 June 2001. I note from a file note dated 5 July 2001 on our files that there was an informal conference between Dr Van Saarloos, his lawyer, Mark Dwyer of Corrs Chambers Westgarth, Mr Jon Long, the supervising partner from Clayton Utz, and Jeanette Butler from the Institute, following a conciliation conference in the Western Australian Industrial Relations Commission on 5 July 2001. I note from the file note that during the informal conference Dr Van Saarloos' lawyer, Mr Mark Dwyer, requested that Clayton Utz provide to him "revised papers re intellectual property". A copy of that file note is exhibited hereto as Exhibit NA-2.

5. I was informed by the supervising partner, Jon Long, and verily believe that during the course of the discussions referred to in the preceding paragraph, Dr Van Saarloos had agreed to execute the Combined Declaration and Power of Attorney, on condition the form was amended in some minor respects. On that basis, Jon Long then instructed me to obtain fresh papers from the Institute's patent attorneys via my instructor at the Institute, Jeanette Butler and then to forward them to Dr Van Saarloos' lawyers.

6. I obtained fresh papers from Jeanette Butler, and forwarded them to Dr Van Saarloos' lawyers, on 16 July 2001. A copy of my covering letter and its enclosures, made from the copy retained in our files, is appended hereto as Exhibit NA-3. I confirm that this letter was accompanied by the amended Assignment, and by the amended Combined Declaration and Power of Attorney. The letter was sent by courier to Dr Van Saarloos' lawyers. A copy of the proof of delivery request is exhibited hereto as Exhibit NA-4.

7. Notwithstanding my earlier understanding, my firm has never received the signed papers from Dr Van Saarloos or his lawyers. This is consistent with Dr Van Saarloos failure to date to act on requests for his signature in papers in various other matters. The disputes between the Institute and Dr Van Saarloos have not been fully resolved.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such wilful false statements may jeopardize the validity of the application or my patent issued thereon.

Date: 13 November 2002



Nerida Aitken